

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #6	CCRB Case #: 201808791	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 10/22/2018 5:30 AM	Location of Incident: [REDACTED]	Precinct: 71	18 Mo. SOL 4/22/2020	EO SOL 12/7/2020	
Date/Time CV Reported Tue, 10/23/2018 12:33 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/23/2018 12:33 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Michael Desetto	1166	951183	WARRSEC
2. DT3 Sean McGovern	3822	942163	WARRSEC

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Benjamin Panas	2827	942804	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Michael Desetto	Abuse: At § 87(2)(b) in Brooklyn, Detective Michael Desetto threatened § 87(2)(b) with the use of force.	[REDACTED]
B.DT3 Michael Desetto	Abuse: At § 87(2)(b) in Brooklyn, Detective Michael Desetto threatened to arrest § 87(2)(b)	[REDACTED]
C.DT3 Michael Desetto	Force: At § 87(2)(b) in Brooklyn, Detective Michael Desetto used physical force against § 87(2)(b)	[REDACTED]
D.DT3 Sean McGovern	Force: At § 87(2)(b) in Brooklyn, Detective Sean McGovern used physical force against § 87(2)(b)	[REDACTED]
E.DT3 Michael Desetto	Abuse: Detective Michael Desetto entered § 87(2)(b) in Brooklyn.	[REDACTED]
F.DT3 Michael Desetto	Abuse: Detective Michael Desetto searched § 87(2)(b) in Brooklyn.	[REDACTED]
G.DT3 Michael Desetto	Abuse: Over the phone, Detective Michael Desetto threatened to damage § 87(2)(b)'s property.	[REDACTED]

Case Summary

On October 23, 2018, § 87(2)(b) filed this complaint over the phone with the CCRB.

On October 22, 2018, at approximately 5:30 a.m., Detective Michael Desetto, Detective Sean McGovern, and Detective Benjamin Panas, of Queens Warrants Section, went to § 87(2)(b) in Brooklyn to apprehend § 87(2)(b) on an arrest warrant. § 87(2)(b) who resided in the location, answered the door when the officers knocked. Det. Desetto explained that they were looking for § 87(2)(b) and showed the arrest warrant. § 87(2)(b) stated that § 87(2)(b) did not live at that address and was not present. Det. Desetto allegedly threatened to tase § 87(2)(b) and allegedly told § 87(2)(b) that he could be arrested if he did not let the officers inside (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). Det. Desetto then allegedly shoved § 87(2)(b) to gain entry into the residence and Det. McGovern allegedly shoved § 87(2)(b) into the kitchen area (**Allegations C and D: Force, § 87(2)(g)**). Det. Desetto entered and searched the apartment (**Allegations E and F: Abuse of Authority, § 87(2)(g)**). The officers did not find § 87(2)(b) or recover anything from the apartment, and then left. A few hours later, at approximately 7:00 a.m., § 87(2)(b) texted Det. Desetto. During this text message conversation, Det. Desetto stated that he could kick down § 87(2)(b)'s door to search for § 87(2)(b) (**Allegation G: Abuse of Authority, § 87(2)(g)**). Also inside of the apartment were § 87(2)(b)'s mother, § 87(2)(b) his grandmother, and § 87(2)(b) his girlfriend. No arrests or summonses resulted from this incident.

There was no video footage obtained of this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: At § 87(2)(b) in Brooklyn, Detective Michael Desetto threatened § 87(2)(b) with the use of force.
Allegation (B) Abuse of Authority: At § 87(2)(b) in Brooklyn, Detective Michael Desetto threatened to arrest § 87(2)(b)

An attorney was consulted in this case.

§ 87(2)(b) testified (Board Review 01) that at approximately 4:00 a.m., he heard knocking at the front door of his apartment. When § 87(2)(b) opened the door, he saw three officers. An officer stated that they were from the Warrants Squad and were looking for § 87(2)(b) § 87(2)(b) described this officer as a white male in his 40s, who stood 5'11"-6'0" tall, with a heavy build, and short salt and pepper hair, and was the officer with whom he primarily interacted. Based upon § 87(2)(b)'s physical description and statement that this officer was the primary point of contact, the investigation determined this officer to be Det. Desetto. Det. Desetto showed a copy of the warrant and § 87(2)(b) stated that § 87(2)(b) was not present and did not live at that location. This conversation lasted for approximately 20 minutes, as § 87(2)(b) did not want to let the officers inside. Det. Desetto then told § 87(2)(b) "Listen man, don't make me tase you, cause we're coming in here. I can call the precinct and have about 20 officers here and you'll get locked up."

§ 87(2)(b) provided a phone statement on June 20, 2019, § 87(2)(g) (Board Review 02). She was present for the conversation at the door and while officers were inside of the apartment. § 87(2)(b) told the officers that § 87(2)(b)

§ 87(2)(b) did not live there, and § 87(2)(b) argued with the officers and stated that they could not enter. There was no conversation or threat involving a taser at any point. An officer told § 87(2)(b) that he could be arrested for disorderly conduct.

§ 87(2)(b) stated over the phone (Board Review 03) that she was not familiar with the incident at all did not remember whether the police entered her home on the date in question.

§ 87(2)(b) provided a phone statement on June 25, 2019 (Board Review 04) and stated that she did not remember much about the interaction and that § 87(2)(b) was not home at the time.

Det. Desetto testified (Board Review 05) that he knocked on the front door of the apartment with Det. McGovern and § 87(2)(b) answered. § 87(2)(b) and § 87(2)(b) then came to the door. Det. Desetto showed the arrest warrant and stated that they were looking for § 87(2)(b) § 87(2)(b) was angry and stated that he was not telling the officers anything. Det. Desetto spoke with § 87(2)(b) outside of the doorway for approximately 15-20 minutes. During this conversation, Det. Desetto did not recall threatening to tase § 87(2)(b) Det. Desetto did not carry a taser at the time. Det. Desetto stated that sometimes as a tactic, he tells civilians that he will call uniformed officers to the location, because it can be beneficial to having more uniformed officers at a location rather than three plainclothes officers. Det. Desetto did not recall whether he said anything to § 87(2)(b) about him being arrested. § 87(2)(b) could not have been arrested for anything.

Det. McGovern testified (Board Review 06) that Det. Desetto did not threaten § 87(2)(b) with the use of his taser. Det. McGovern did not recall any conversation about § 87(2)(b) being arrested. He did not recall whether Det. Desetto told § 87(2)(b) that he could be arrested for disorderly conduct or whether, in sum and substance, Det. Desetto stated he could call the precinct and get 20 officers to respond to the apartment and § 87(2)(b) would be arrested.

Det. Panas testified (Board Review 07) that he was not present during this part of the interaction and did not go to the apartment until he was told over the radio that Det. Desetto and Det. McGovern were granted consent to enter and search the apartment.

§ 87(2)(g)

Allegation (C) Force: At § 87(2)(b) in Brooklyn, Detective Michael Desetto used physical force against § 87(2)(b)

Allegation (D) Force: At § 87(2)(b) in Brooklyn, Detective Sean McGovern used physical force against § 87(2)(b)

§ 87(2)(b) testified that after Det. Desetto threatened § 87(2)(b) with the use of force and stated that he could be arrested, § 87(2)(b) stated that no one was entering the apartment. Det. Desetto shoved § 87(2)(b) with two hands against his chest once, causing him to stumble backwards inside the apartment hallway. Det. McGovern then shoved § 87(2)(b) into the kitchen.

§ 87(2)(b) stated that no officer made any physical contact with § 87(2)(b) was present for the conversation at the doorway, but it is unclear if she was there for the entire time.

As previously stated, § 87(2)(b) stated that she was not familiar with the incident at all and § 87(2)(b) stated that § 87(2)(b) was not home at the time of the incident.

Det. Desetto testified that he did not push § 87(2)(b) to gain entry into the apartment and did not make any physical contact with § 87(2)(b). Det. McGovern did not make any physical contact with § 87(2)(b). Det. McGovern testified that neither he nor Det. Desetto pushed or made any physical contact with § 87(2)(b). Det. Panas testified that he was not present during this part of the interaction.

§ 87(2)(g)
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Allegation (E) Abuse of Authority: Detective Michael Desetto entered § 87(2)(b) in Brooklyn.

Allegation (F) Abuse of Authority: Detective Michael Desetto searched § 87(2)(b) in Brooklyn.

It is undisputed that Queens Warrants officers entered and searched § 87(2)(b) in Brooklyn on October 22, 2018, pursuant to an active arrest warrant for § 87(2)(b). When Det. Desetto arrived, he explained that they were looking for § 87(2)(b) and showed a copy of the arrest warrant. The entry and search allegations were pleaded against Det. Desetto, as he was the lead investigative officer.

§ 87(2)(b) testified that he was friends with § 87(2)(b) and that § 87(2)(b) visited his apartment whenever he was in town. On October 22, 2018, § 87(2)(b) told officers that § 87(2)(b) was not present and did not live at that location, and that he did not want officers to enter. After a 20-minute conversation, in which the prior allegations occurred, Det. Desetto and Det. McGovern shoved § 87(2)(b) to gain entry into the apartment. Det. Desetto and Det. McGovern entered each bedroom of the apartment and bathroom. When the officers entered § 87(2)(b)'s bedroom, they looked under his bed and opened his closet. After searching in § 87(2)(b)'s room, the officers left the apartment.

§ 87(2)(b) stated that § 87(2)(b) argued with the officers about permitting them to enter, but § 87(2)(b)'s mother, § 87(2)(b) ultimately let the officers inside. In her phone statement, § 87(2)(b) initially stated that two officers just walked into the apartment and later stated that she let the officers inside. As previously discussed, § 87(2)(b) stated that she was not familiar with the incident at all and did not remember whether the police entered her home in October 2018.

Det. Desetto testified that he conducted multiple database searches for § 87(2)(b) approximately one month prior to October 22, 2018. Through one of the searches, Det. Desetto found that § 87(2)(b) was on parole in § 87(2)(b). Det. Desetto spoke with § 87(2)(b) parole officer, who stated that § 87(2)(b) was the address that § 87(2)(b) listed in his parole documentation as his current home address. There was also a Criminal Justice Agency (CJA)

report from one of § 87(2)(b) arrests in New York City where § 87(2)(b) listed the same location as his home address. Det. Desetto was not sure which of § 87(2)(b) arrests generated this CJA report and later stated that it was possible that he mixed up the dates and he was not sure whether there was a CJA report listing that address prior to October 22, 2018.

On October 22, 2018, prior to knocking on the apartment door, Det. Desetto spoke with the superintendent of the building. Det. Desetto showed the superintendent a photograph of § 87(2)(b) and he confirmed that § 87(2)(b) lived at that location, in § 87(2)(b).

Det. Desetto believed that § 87(2)(b) was § 87(2)(b) home address, based upon the parole documentation and conversation with § 87(2)(b) parole officer, the CJA report, and his conversation with the superintendent. Det. Desetto believed that § 87(2)(b) was inside of the apartment at that time because the superintendent stated that § 87(2)(b) lived there.

On October 22, 2018, Det. Desetto and Det. McGovern went to § 87(2)(b) and Det. Panas waited outside. Det. Desetto knocked on the front door and § 87(2)(b) answered. § 87(2)(b) came over and identified herself as the apartment owner. § 87(2)(b) then came to the door, took over the conversation, and stated that they were not telling the officers anything. After a copy of the arrest warrant was shown, § 87(2)(b) questioned why the officers were there if a different address was listed on the warrant. Det. Desetto explained that the address did not have to be the same, and that they were able to enter if they believed § 87(2)(b) was inside. § 87(2)(b) and § 87(2)(b) eventually allowed Det. Desetto and Det. McGovern to enter the apartment to search for § 87(2)(b). Det. Desetto and Det. McGovern entered and conducted a brief search to look for § 87(2)(b). Det. Desetto and Det. McGovern did not enter any rooms and they peered into two or three rooms. The apartment was filthy, and filled with garbage, human excrement, and bugs, and thus, the officers left after two or three minutes. They did not find § 87(2)(b) or recover anything from the apartment. Det. Desetto was not sure whether Det. Panas entered the apartment.

According to Det. Desetto's DD5s (Board Review 08), on October 2, 2018, Det. Desetto conferred with Det. Gianfranco Mezzoiuso of the 110th Precinct Detective Squad. Det. Mezzoiuso stated that § 87(2)(b) was currently on parole in § 87(2)(b) and that he spoke with § 87(2)(b) parole officer. On October 22, 2018, Det. Desetto wrote that he visited § 87(2)(b) California probation listed address of § 87(2)(b) in Brooklyn. He spoke with § 87(2)(b)'s grandmother, and another female, who were agitated and uncooperative. Det. Desetto searched the residence and § 87(2)(b) was not present.

In Det. Desetto's memo book (Board Review 09), he wrote that at 5:30 a.m. on October 22, 2018, he arrived at § 87(2)(b) in Brooklyn and was "allowed search by resident."

Additionally, in Det. Desetto and § 87(2)(b)'s text message conversation, provided to the investigation by Det. Desetto, § 87(2)(b) stated, "You'r[e] lucky I even allowed you in brother" (Board Review 10).

§ 87(2)(g) Det. McGovern stated that § 87(2)(b) told him and Det. Desetto that they could enter the apartment and look inside. Det. Panas stated that he waited in a side alleyway that was connected to the

apartment building, to ensure that nobody exited the building. After Det. Desetto and Det. McGovern gained entry into the apartment, he was told via radio to come to the location. Det. Panas entered the apartment and walked down the main hallway but did not step into any rooms. He looked into one room, solely to determine whether anybody else was inside of the apartment.

Arrest Warrant number § 87(2)(b) (Board Review 11 and 12), which was signed by Hon. § 87(2)(b) was issued on § 87(2)(b) and was active at the time of the incident. The warrant listed § 87(2)(b) in the Bronx as § 87(2)(b) address.

An arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Payton v. New York, 445 U.S. 573 (1980) (Board Review 13). When officers have reason to believe that the subject of an arrest warrant in a location, they may reasonably infer that he or she will be home early in the morning. United States v. Terry, 702 F.2d 299 (2d Cir. 1983) (Board Review 14).

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Allegation (G) Abuse of Authority: Over the phone, Detective Michael Desetto threatened to damage § 87(2)(b)'s property.

It is undisputed Det. Desetto told § 87(2)(b) via text message, that he could kick down § 87(2)(b)'s door to search for § 87(2)(b). They texted on October 22, 2018, shortly after Det. Desetto, Det. McGovern, and Det. Panas left § 87(2)(b)'s residence. Det. Desetto provided the investigation with screenshots of their entire conversation (Board Review 10).

§ 87(2)(b) told Det. Desetto that § 87(2)(b) did not live at his residence and that he did not know where § 87(2)(b) was. They continued texting about the situation and Det. Desetto stated, "If I think he's in there, I can kick your door in." § 87(2)(b) stated that Det. Desetto could not kick his door in, and Det. Desetto replied that he only needed reasonable cause to believe that the subject was in a location and that he 100% could kick the door open. § 87(2)(b) told Det. Desetto to come tomorrow and kick it in and Det. Desetto replied that he would not come tomorrow, but soon.

As stated earlier, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within. Payton v. New York, 445 U.S. 573 (1980). If officers are authorized to enter premises, pursuant to an arrest warrant, they may enter "by a breaking if necessary." New York Criminal Procedure Law § 120.80 (Board Review 15).

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Civilian and Officer CCRB Histories

- § 87(2)(b) [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
[Redacted]
 - [Redacted]
[Redacted]
[Redacted]
 - [Redacted]
[Redacted]
 - [Redacted]
[Redacted]
- Det. Desetto has been a member of service for eight years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g) [Redacted]
[Redacted]
- Det. McGovern has been a member of service for 13 years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) [Redacted] declined to mediate this complaint.
- A Notice of Claim Inquiry was submitted to the NYC Comptroller's Office on August 28, 2019 and will be included in the case file upon receipt.
- § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer:

Signature

Print Title & Name

Date